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In The

Supreme Court of the United States

October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. WHETHER DUE PROCESS REQUIRES RE-LITIGATION OF THE ALABAMA SUPREME COURT'S 1989 RULING THAT RESPONDENT IS THE NATURAL CHILD AND HEIR OF HANK WILLIAMS, SR. NOW THAT THE PARTIES THERETO HAVE SETTLED?

2. WHETHER THE COPYRIGHT ACT'S THREE-YEAR STATUTE OF LIMITATIONS, 17 U.S.C. § 507(b), SHOULD BE INTERPRETED TO FORFEIT RESPONDENT'S INTEREST IN THE ENTIRE 47-YEAR TERM OF THE UNITED STATES RENEWAL COPYRIGHTS IN THE MUSICAL COMPOSITIONS WRITTEN BY HER FATHER, HANK WILLIAMS, SR.?

3. WHETHER, UNDER THE COPYRIGHT ACT OF 1976, A CHILD OF A DECEASED AUTHOR FORFEITS HER OWNERSHIP OF THE RENEWAL COPYRIGHTS TO COMPOSITIONS OF HER FATHER IF, AFTER THE DEATH OF HER FATHER AND BEFORE THE VESTING OF THE RENEWAL COPYRIGHTS, SHE WAS ADOPTED BY THIRD PARTIES?

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IV. STATEMENT OF THE CASE[1]

Respondent is the natural daughter of Hiram "Hank" Williams, Sr. ("Hank Williams, Sr.") and Bobbie W. Jett ("Jett"). Respondent's status as the natural child of Hank Williams, Sr. was judicially determined after a 1987 bench trial in Alabama against Petitioner Hank Williams, Jr. ("Williams, Jr."), and Petitioners Roy Acuff and Wesley Rose, as trustees in liquidation of Petitioners Fred Rose Music, Inc. and Milene Music, Inc. (the "Acuff/Rose Petitioners"). (App. J-1.20, J-2.3). The Acuff/Rose Petitioners are the predecessors-in-interest to Petitioners Acuff Rose Opryland Music, Inc. and Milene-Opryland Music, Inc. (the "Opryland Petitioners") with respect to the United States renewal copyrights in the music compositions written by Respondent's father (the "Renewal Copyrights"). This judgment has never been appealed and the Alabama Supreme Court found the paternity judgment to be undisputed and established by "clear and convincing evidence." (App. I-1.49 & n.23). Contrary to Petitioners' statement of facts, there is nothing "alleged" about Respondent's status as the natural child of Hank Williams, Sr. All of the Petitioners were either parties or, privies to parties, to the trial in Alabama which established this fact. Almost six years later, Petitioners are still

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[1] Only those facts pertinent to whether certiorari should issue, which are not in petitioners' statement of the case, are set forth herein. A more comprehensive statement of the facts can be found in *Stone v. Gulf American Fire & Casualty Co.*, 554 So.2d 346 (Ala. 1989), *cert. denied*, 496 U.S. 943, 110 S. Ct. 3229, 110 L. Ed. 2d 676 (1990) (App. I-1 *et seq.*, and I-2 *et seq.*), and in Respondent's Petition for Writ of Certiorari in *Stone v. Williams, Jr.*, et al. No. 89-295. References to "App." are to the Appendices to the Petition for Writ of Certiorari.

trying to avoid the natural consequences of the paternity trial's outcome.

The Alabama litigation was commenced by Petitioners and sought a declaration that Respondent was neither the child nor the heir of Hank Williams, Sr. (App. I-1.2 & n.2). In her third party complaint, Respondent alleged, among other things, fraud and conspiratorial concealment of her existence and identity from the Alabama court supervising the estate of Hank Williams, Sr. and requested that the estate be re-opened and that she receive her 50% proportionate share of that estate. Petitioners at all times received notice of the proceedings in the Alabama litigation including Respondent's appeal to the Alabama Supreme Court seeking to have the estate of Hank Williams, Sr. re-opened and to have herself declared as an heir, entitled to a 50% interest in that estate. Petitioners elected not to participate directly in that appeal procedure until after the Alabama Supreme Court issued its opinion in July of 1989. In that opinion, the Alabama Supreme Court held that Respondent was an heir, along with Williams, Jr., of Hank Williams, Sr., reopened the estate, and declared that Respondent was entitled to a 50% share of the proceeds of the Hank Williams, Sr. estate for all time in the future, but limited her recovery of past damages to distributions made since August of 1982. (App. I-1.1 *et seq.*).

Thereafter, Williams, Jr. petitioned the Alabama Supreme Court to vacate and modify its July 1989 opinion. In an extensive opinion, the Alabama Supreme Court reviewed Williams, Jr.'s arguments, including the constitutional arguments restated herein, rejected them, and

denied his petition to vacate and modify its earlier opinion (App. I-2).

Williams, Jr. then petitioned this Court for Writ of Certiorari to review the Alabama Supreme Court's July and November 1989 opinions, which petition was denied. 496 U.S. 943, 110 S. Ct. 3229 (1990).

Still dissatisfied with the results of the proceedings before the Alabama Supreme Court, Williams, Jr. then filed an action in the United States District Court for the Middle District of Alabama asserting, as he does here, that the Alabama Supreme Court decision was constitutionally infirm and could not be enforced by the Alabama trial court. This position was rejected by the district court, *Williams v. Adkinson*, 792 F. Supp. 755 (M.D. Ala. 1992), in an opinion recently affirmed *per curiam* by the Court of Appeals for the Eleventh Circuit. *Williams v. Adkinson*, 1993 U.S. App. Lexis 3439 (11th Cir. 1993). (Resp. App. 1a).

At the end of last month, March 1993, Petitioner Williams, Jr. and Respondent completely resolved by written agreement the Alabama action regarding the estate of Hank Williams, Sr. As a result, the litigation between them in the Alabama Circuit Court on remand from the Alabama Supreme Court will soon be dismissed, and the estate of Hank Williams, Sr. ordered distributed to Petitioner Williams, Jr. and to Respondent.

V. REASONS FOR DENIAL OF THE WRIT

As the Second Circuit recognized, Respondent's efforts to establish her rights as a natural child of Hank Williams, Sr. to share in his estate as his heir, and to co-

own the United States Renewal Copyrights to his compositions, has resulted in over seven years of "bitter litigation." (App. A-1.2). Allied against Respondent have been the son and widow of Hank Williams, Sr. and the publishing companies who claim interest in the Renewal Copyrights through them. Not only has this been "bitter litigation" but it is the culmination of 40 years of fraud, deception, and deceit, practiced not only upon Respondent but also upon the Alabama Courts. In 1989 the Alabama Supreme Court was finally presented with an opportunity to review the shameful and fraudulent conduct by which Respondent was excluded from the enjoyment of the fruits of her father's labor, and the circumstances by which Petitioners have gained the benefit of such wrongful acts. In response, the Alabama Supreme Court concluded that the Alabama courts have been consistently deceived and defrauded from the death of Hank Williams, Sr., in 1953 through the initial closing of the estate in 1974. (App. I-1.55). The wrongdoing was found to be so egregious that prior orders entered during the pendency of the estate were vacated, the estate reopened, and the undisputed natural child of Hank Williams, Sr., was found to be an heir of Hank Williams, Sr. (App. I-1.1, 1.36, 1.55). This portion of Respondent's litigation effort has now been successfully concluded and the Alabama litigation against Williams, Jr. will be dismissed and the estate distributed to Respondent and Respondent Williams, Jr.

This "bitter litigation" has to date spawned three prior petitions to this Court for review by writ of

certiorari.[2] In all three prior instances, review has been denied[3], as it should be in this fourth effort. As has been recognized by every court that has considered it, this "bitter litigation" is based upon unique facts and peculiar circumstances, but is, after all, merely a contest "between Hank Williams' heirs over copyright renewal rights." (See, App. at I-1.54, C-1.9). Given the resolution of the Alabama estate litigation, there is even less justification now than before for review by this Court.

Petitioners point to no conflict among decisions of United States Courts of Appeals on any of the questions presented. No important question of federal law has been presented which should be settled by this Court, or which has been decided in a way that conflicts with applicable decisions of this Court. Indeed, several of the defendants equally aggrieved by the decision of the Court of Appeals have not even joined in that petition. Defendants Billie Jean Williams Berlin, the widow of Hank Williams, Sr., and her music publishers, Chappell & Co., Inc., and Aberbach Enterprises, Ltd., have not sought review of the Court of Appeals decision.

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[2] *Williams, Jr. v. Stone*, Case No. 89-1538 (on petition for writ of certiorari to the Supreme Court of Alabama); *Williams, Jr. et al. v. Stone*, Case No. 89-1563 (on petition for writ of certiorari to the United States Court of Appeals for the Second Circuit); *Stone v. Williams, Jr.*, Case No. 89-295 (on petition for writ of certiorari to the United States Court of Appeals for the Second Circuit).

[3] *Stone v. Williams*, 873 F.2d 620 (2d Cir. 1989), *cert. denied*, 493 U.S. 959, 110 S. Ct. 377, 107 L. Ed. 362 (1989), *vacated*, 891 F.2d 401 (2d Cir. 1989), *cert. denied*, 496 U.S. 937, 110 S. Ct. 3215, 110 L. Ed. 62 (1990); *Stone v. Gulf American Fire & Casualty Co.*, 554 So.2d 346 (Ala. 1989), *cert. denied*, 496 U.S. 943, 110 S. Ct. 3229, 110 L. Ed. 2d 676 (1990).

A. DUE PROCESS DOES NOT REQUIRE THAT RESPONDENT MUST RE-LITIGATE THE 1989 ALABAMA SUPREME COURT RULING THAT SHE IS THE NATURAL CHILD AND HEIR OF HANK WILLIAMS, SR.

Petitioners' attack on the Second Circuit's opinion is nothing more than Petitioners' third attempt to obtain review of the Alabama Supreme Court's 1989 decisions and to force a re-trial of the paternity issues resolved against them at trial in Alabama. Both this Court, and the Court of Appeals for the Eleventh Circuit, have previously declined to review Petitioners' claim that the Alabama Supreme Court deprived Williams, Jr. of constitutional due process. Petitioners' third try should meet the same result. It would be anomalous and a waste of judicial effort for this Court to review the four-year-old Alabama Supreme Court's decision now that the Alabama litigation over sharing the proceeds of the Hank Williams, Sr. estate has been finally resolved by Respondent and Williams, Jr.

Petitioners' arguments mischaracterize both the nature of the ruling of the Court of Appeals and the scope of Petitioners' participation in the Alabama Supreme Court proceedings and in the Alabama trial court proceedings in which it was ruled that Respondent is the natural child of Hank Williams, Sr. Contrary to Petitioners' arguments, the Court of Appeals did inquire into whether Petitioner had a full and fair opportunity to litigate Respondent's paternity in Alabama. Finally, the final resolution of the Alabama litigation by the parties thereto, which will now result in the distribution of Respondent's share of the estate, moots any attack upon

the Alabama Supreme Court's decision declaring that Respondent is an heir of Hank Williams, Sr.

1. PETITIONERS MISCHARACTERIZE THE COURT OF APPEALS' RULINGS WITH RESPECT TO THE 1989 ALABAMA SUPREME COURT DECISION.

Petitioners incorrectly contend that the Court of Appeals granted res judicata or collateral estoppel preclusive effect to the Alabama Supreme Court's rulings that Respondent is the natural child of Hank Williams, Sr. and that she is the heir of Hank Williams, Sr. The Court of Appeals gave preclusive effect only to the Alabama Supreme Court's determination that Respondent is the natural child of Hank Williams, Sr. The Court of Appeals analyzed "whether *Gulf American's* determination that [Respondent] is the natural child of Williams, Sr. is binding on [Petitioners]. (App. A-1.25). The Court of Appeals noted that "*Gulf American's* determination on paternity is not open to attack by [Petitioners], if they are bound by that judgment." (App. A-1.27). Having thus posed the question, the Court of Appeals expressly answered it by concluding "that [Petitioners] may not challenge the determination of the Alabama Supreme Court that [Respondent] is the natural child of [Hank] Williams, Sr." (App. A-1.39).

Thus, the Court of Appeals did not find or rule that Petitioners were precluded by res judicata or collateral estoppel from litigating the issue of whether or not Respondent could inherit under the Alabama intestacy laws from her father, Hank Williams, Sr.

In a subsequent ruling, the Court of Appeals decided that Respondent was a member of the statutory class of owners of the renewal copyrights where the author did not survive to the vesting of the renewals because she was a "child" of Hank Williams, Sr. under the Copyright Act of 1909, § 24, and the Copyright Act of 1976, § 304(a). The Court of Appeals followed in both instances the teaching of this Court that an illegitimate child is a "child" for these purposes if the illegitimate child is allowed to inherit from his/her deceased author parent under applicable state law. *De Sylva v. Ballentine* 351 U.S. 570, 76 S. Ct. 974, 100 L. Ed. 1415 (1956). Thus, the Court of Appeals followed the Alabama Supreme Court's decision that Respondent was an heir of Hank Williams, Sr., not because Petitioners were bound by the doctrines of collateral estoppel or res judicata, but rather because the Alabama Supreme Court's decision was the interpretation of applicable Alabama State law on the heirship issue by Alabama's highest court, which decision was binding on the court below. Rules of Decision Act, 28 U.S.C. § 1652; *Groppi v. Wisconsin*, 400 U.S. 505, 508, 91 S. Ct. 490, 492, 27 L. Ed. 2d 571 (1971). (App. A-1.43). Indeed, the Court of Appeals would be required to follow the Alabama Supreme Court's decision that Respondent is the heir of Hank Williams, Sr. even if none of the Petitioners had participated in any way in the Alabama litigation.

2. PETITIONERS ARE BOUND BY THE ALABAMA SUPREME COURT'S DECISION THAT RESPONDENT IS THE NATURAL CHILD OF HANK WILLIAMS, SR. BECAUSE THEY WERE EITHER PARTIES, OR PRIVY TO PARTIES, TO THE ALABAMA PATERNITY TRIAL AND TO THE ALABAMA SUPREME COURT PROCEEDINGS.

Throughout their Petition, Petitioners seek to give the impression that they did not participate in, and were not parties to, the proceeding by which it was determined that Respondent is the natural child of Hank Williams, Sr. This is simply not true. In 1987, Petitioner Williams, Jr. and the Acuff/Rose Petitioners fully participated in the bench trial that resulted in the judgment that Respondent is the natural child of Hank Williams, Sr. (App. J-1.19-.20; J-2.1-.3). These Petitioners also participated in the summary judgment proceedings that resulted in the extensive and factually detailed order of then Alabama Circuit Judge H. Mark Kennedy. (App. J-1.1, *et seq.*). It was the very facts found by Judge Kennedy upon Petitioners' own motion upon which the Alabama Supreme Court based its rulings. (App. I-1.4). The Opryland Petitioners are the successors-in-interest to the Acuff/Rose Petitioners in the Hank Williams, Sr. Renewal Copyrights and, as such, are privies to them under Alabama law with respect to these trial court determinations. *Watson v. Mills*, 275 Ala. 176, 153 So.2d 612, 614 (Ala. 1963) ("The term 'privity' denotes mutual or successive relationship to the same right of property.")

Petitioners argue that they did not participate in the Alabama Supreme Court proceeding in which Respondent sought to have herself declared an heir of Hank Williams, Sr. and to re-open the Hank Williams, Sr. estate, even though they had notice of that appeal. Even assuming Petitioners' assertion to be true, which Respondent does not concede, this assertion has no bearing on the preciusive effect of the finding after trial in the Alabama Circuit Court that Respondent is the natural child of Hank Williams, Sr. The Alabama Supreme Court correctly characterized the trial court's finding on paternity to be "undisputed" and "established by clear and convincing evidence" at trial (App. I-1.49, n.23). Had there been no appeal by Respondent, the trial court decision that she was the natural child of Hank Williams, Sr. would still be binding on Petitioners.

Contrary to Petitioners' arguments, the Court of Appeals correctly found that, under Alabama law, Williams, Jr. was a party to the proceeding in which the Alabama Supreme Court decided that Respondent, as the undisputed child of Hank Williams, Sr., was an heir to the estate of Hank Williams, Sr. (App. A-1.32). This question was decided by the Alabama Supreme Court under Alabama law, and the Court of Appeals was precluded from deciding otherwise. *Kremer v. Chemical Const. Corp.*, 456 U.S. 461, 481-82, 102 S. Ct. 1883, 1897-98, 72 L. Ed. 2d 262 (1982). Based on Williams, Jr.'s and the Acuff/Rose Petitioners' participation in the paternity proceedings, Williams, Jr.'s participation in the Alabama Supreme Court proceedings, and the detailed consideration that the Alabama Supreme Court gave the various arguments raised by Williams, Jr., the Court of Appeals concluded that the

issue of whether Respondent is the natural child of Hank Williams, Sr. was fully and fairly decided by the Alabama Supreme Court and that the state proceedings satisfied the "minimal procedural requirements of due process to qualify for full faith and credit." *Kremer, supra*, 456 U.S. at 481, 102 S. Ct. at 1897-98. (App. A-1.27-.32).

Alabama law would also treat the Acuff/Rose Petitioners and the Opryland Petitioners as privies to Williams, Jr. in this regard. As noted above, the Acuff/Rose Petitioners were parties to, and actually participated in, the trial at which Respondent was found to be, by clear and convincing evidence, the natural child of Hank Williams, Sr. This ruling was not appealed and was undisputed before the Alabama Supreme Court. These Petitioners were not found to be parties to the Appeal, but were found to be bound by the Alabama Supreme Court decision as being in privity with Williams, Jr. (A-1.33-.37). This decision, as noted by the Court of Appeals, was determined by that Court's "sense of justice and equity," and the Court of Appeals stated that it did "not believe it fundamentally unfair or incompatible with notions of justice or due process to bind defendants by *Gulf American's* findings of paternity." (App. A-1.38). Upon this record, it is impossible to reasonably assert that Petitioners did not have a "full and fair opportunity to litigate the issue [of Respondent's paternity] in that prior adjudication." *Kremer*, 456 U.S. at 480-81 & n.22, 102 S. Ct. at 1896-97 & n.22. This decision, in large part dependent upon the unique and special circumstances surrounding the forty-year conspiracy to prevent Respondent from enjoying the state and federally-recognized benefits to be derived from her natural father, Hank

Williams, Sr., is thus simply not a proper subject for review by this Court.

3. THE COURT OF APPEALS DID INQUIRE INTO WHETHER PETITIONER WILLIAMS, JR. HAD A FULL AND FAIR OPPORTUNITY TO LITIGATE THE ISSUE OF RESPONDENT'S PATERNITY.

Petitioners' argument that the Court of Appeals failed to conduct an independent inquiry into Petitioners' arguments that the 1989 Alabama Supreme Court decision denied them due process is utterly frivolous as even a casual reading of the Court of Appeals' decision will reveal. All that Petitioners are really arguing is that in the District Court they were successful with their argument that the Alabama Supreme Court should not be given full faith and credit, but they lost this argument before the Court of Appeals. (Petition at 16).

Nor did the Court of Appeals blindly accept any recitals by the Alabama Supreme Court. Petitioner confuses two issues analyzed by the Court of Appeals. First, the Court of Appeals analyzed the preclusive effect of the Alabama Supreme Court's ruling upon Williams, Jr. under Alabama law. In this regard, the Court of Appeals correctly noted that, under Alabama law, the Alabama Supreme Court's decision was binding upon Williams, Jr., that the Alabama Supreme Court had in rem jurisdiction, and that Williams, Jr. was not denied due process under Alabama state law. (App. A-1.30-1.32). The Court of Appeals cited *Kremer*, 456 U.S. at 481, 102 S. Ct. at 1897, to

support its conclusion that "state proceedings need do no more than satisfy the minimal procedural requirements of due process to qualify for full faith and credit." Second, with respect to the determination that Respondent is the natural child of Hank Williams, Sr., the process afforded to Williams, Sr., and the other Petitioners, was far more than "minimal procedural requirements." Williams, Jr., as well as the Acuff/Rose Petitioners, directly participated in, and were parties to, the trial at which the fact of Respondent's paternity was established. This trial court finding was correctly deemed "undisputed" by the Alabama Supreme Court.

The Court of Appeals also carefully analyzed the due process issues relating to the Petitioners other than Williams, Jr. arising from its decision to give full faith and credit to the Alabama Supreme Court's decisions. (App. A-1.37-.39).

What Petitioner Hank Williams, Jr. really seeks is a re-trial of the paternity issue that was conclusively determined after trial in Alabama and which was never thereafter appealed by him, or any other Petitioner. Not only are Petitioners not entitled to any such re-trial, but the entire issue is now moot.

4. PETITIONERS' COLLATERAL ATTACK UPON THE ALABAMA SUPREME COURT DECISION THAT RESPONDENT IS THE NATURAL CHILD AND HEIR OF HANK WILLIAMS, SR. ENTITLED TO PARTICIPATE IN 50% OF THE PROCEEDS OF THE ESTATE OF HANK WILLIAMS, SR., IS MOOT.

The Alabama estate litigation has finally been resolved within the last three weeks and Respondent will hereafter be receiving her share of the estate of Hank Williams, Sr. Under these circumstances, it makes no sense to re-litigate the now moot issues of paternity and heirship determined by the Alabama Supreme Court.

B. THE COPYRIGHT ACT'S THREE-YEAR STATUTE OF LIMITATIONS DOES NOT REQUIRE THE FORFEITURE OF RESPONDENT'S FEDERALLY CREATED 47-YEAR RENEWAL COPYRIGHTS IN THE COMPOSITIONS OF HER FATHER, HANK WILLIAMS, SR.

Petitioners present absolutely no reason why this Court should grant a Writ of Certiorari to review the Court of Appeals' non-controversial application of the three-year statute of limitations contained in the Copyright Act of 1976. 17 U.S.C. § 507(b).

The decision of the Court of Appeals on the statute of limitations issue is based upon long-standing principles applicable to the Copyright Act and to statutes of limitations in general. There has been no new ground broken and Petitioners can point to no conflicts between the decision of the Court of Appeals in this case and other

decisions of this Court or any other Federal Courts. Petitioners' disagreement with the Court of Appeals' decision does not justify granting their petition.

The Court of Appeals merely applied the analogous rule of *Mount v. Book-of-the-Month Club, Inc.*, 555 F.2d 1108 (2d Cir. 1977) that the Copyright Act's statute of limitation bars the recovery of damages accruing more than three years prior to the filing of a suit for infringement. As the Court of Appeals also correctly noted, the statute of limitations extinguishes remedies but not the assertion of rights. (App. A-1.16). *Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 340 (5th Cir. 1971). Of course, this ruling also means that Petitioners can now keep Respondent's share of all Renewal Copyright royalties received prior to September 1982, ten years after the start of the first renewal copyright term.

Petitioners' entire argument is that Respondent could have commenced an action to declare her co-ownership of the renewal copyrights sooner than she did and, therefore, the statute of limitation should bar her assertion of any claim for relief based upon her co-ownership of those renewal rights. That is, Petitioners claim that Respondent should forfeit to Petitioners her co-ownership of the entire 47 years Renewal Copyright term because she did not sue within three years of the time she first learned of a possible claim. As the Court of Appeals noted, this "overly technical approach" misses the point. (App. A-1.13). A brief hypothetical illustrates the correctness of this dismissal of Petitioners' argument.

What Respondent seeks by this lawsuit is to receive her proper share of the revenues derived from the

exploitation of the renewal copyrights to her father's musical compositions. To establish her entitlement to those revenues, Respondent must prove that she is a co-owner of the renewal copyrights just as any owner of a copyright must prove that they are the owner of a copyright when they sue for infringement.

Respondent could have brought a series of lawsuits, each seeking recovery of damages from the Petitioners, but none seeking a declaration of ownership rights. After she prevailed in the first lawsuit and proved her co-ownership of the renewal copyrights, Petitioners would be barred by doctrines of res judicata from re-litigating her ownership of those renewal copyrights. At no time, however, would Respondent have ever asked for a declaratory judgment acknowledging her ownership. Petitioners' present arguments, therefore, that seek to distinguish between the remedy of damages and the declaratory relief remedy could not even have been made. Certainly Respondent cannot be found to have forfeited her entitlement to the 47 years of the renewal copyright term because she sought a declaratory judgment and damages when no such forfeiture could have even been argued if she had merely sought recovery of damages in a series of lawsuits over that 47-year period.

There is no basis for this Court to review the non-controversial application of the Copyright Act's statute of limitation in this case.

C. THAT RESPONDENT WAS FIRST ADOPTED BY HER GRANDMOTHER, AND THEN BY AN UNRELATED FAMILY, AFTER THE DEATH OF HER FATHER, HANK WILLIAMS, SR. DOES NOT WORK AS A FORFEITURE OF HER CO-OWNERSHIP OF THE RENEWAL COPYRIGHTS IN HER FATHER'S COMPOSITIONS.

Continuing in the family tradition of attempting at all costs to prevent Respondent's enjoyment of the benefits guaranteed to her by the Copyright Act as the natural child of the distinguished country music composer Hank Williams, Sr., the Petitioners go so far as to assert that Respondent should be deemed to have forfeited to Petitioners her co-ownership of the Renewal Copyrights because, after her father's death, she was first adopted by her grandmother, Hank Williams, Sr.'s mother, and then, after her grandmother's death, by an unrelated family. The cruelty and inhumanity of this argument merely underscores the wrong that Petitioners, and others, have perpetrated upon Respondent over the last 40 years.

A few months before Respondent's birth, her father and mother entered into a written agreement by which her father agreed to pay for her care and upbringing and receive actual physical custody of her. (App. I-1.5-.7). Upon Hank Williams, Sr.'s sudden and unexpected death a few days before Respondent's birth, there began a conspiracy to deny to Respondent the benefits that flow from being a child of Hank Williams, Sr. Despite her father's express and written desire to care for her after her birth, her identity and existence was fraudulently

concealed from the Alabama probate court that supervised her father's estate. (App. I-1.12-.32). As the Alabama Supreme Court has noted, (a) the custody/support agreement executed by her father was a contractual obligation that could have been enforced so that her father's estate would have paid for her care and upbringing and, (b) under Alabama law in 1953, the custody/support agreement could have been a sufficient acknowledgment of her paternity so that she would have then been legitimated and would have been deemed to be an heir to the estate from the time of her birth, 40 years ago. (App. I-1.41-.43 & n.19 and 20). All of this was denied to Respondent.

As an infant, Respondent was helpless to fight against these machinations and was subject to the cruelty, greed, and neglect of those, including the state of Alabama, whose duty it was to protect her. This fact has been acknowledged by the Alabama Supreme Court. (App. I-1.55). Having been prevented by fraud and malfeasance from either being legitimated as a result of the custody agreement, or at least having her care and upbringing paid for by her father's estate, in accordance with her father's expressed written desire, Respondent was placed up for adoption and was twice adopted. By their argument, Petitioners' attempt to continue to benefit from the fraud that had been successfully perpetrated upon Respondent until the 1989 decision of the Alabama Supreme Court. Surely, such an argument cannot support the issuance of a Writ of Certiorari by this Court.

1. THE COURT OF APPEALS' APPLICATION OF THE *DE SYLVA V. BALLENTINE* RULE IN THIS CASE TO THE RENEWALS UNDER THE 1976 COPYRIGHT ACT IS CORRECT.

The Court of Appeals correctly analyzed the issue of whether state or federal law should determine whether or not Respondent is a "child" under the 1976 Act.

The Court of Appeals determined that Congress, by enacting the 1976 Act did not intend to alter the law applicable to the determination of the category of "children" for purposes of ownership of renewal copyrights, to works originally copyrighted under the Copyright Act of 1909. This result is supported by the legislative history of Section 304(a) of the 1976 Act that Congress intended to preserve the language of the 1909 Act's "renewal provision without any change in substance." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 139, *reprinted in* 1976 U.S. Code Cong. & Admin. News 5659, 5755 (App. A-1.47-.49). Accordingly, the Court of Appeals concluded that state law identifies the owners of the property right granted by Section 304(a) of the 1976 Act as it did under Section 24 of the 1909 Act. Under this Court's decision in *De Sylva*, the Court of Appeals was required to look to Alabama state law to determine whether or not Respondent was an heir of the author, Hank Williams, Sr. The Alabama Supreme Court has expressly ruled that she is.

2. EVEN WERE THE DEFINITION OF CHILD IN SECTION 101 OF THE COPYRIGHT ACT OF 1976 APPLIED, RESPONDENT WOULD STILL BE ENTITLED TO CO-OWNERSHIP OF THE RENEWAL COPYRIGHTS.

Petitioners argue that because Respondent had been adopted after the death of her father, she is no longer a "child" of Hank Williams, Sr. under the Section 101 definition of the 1976 Act. There is nothing in the statute that should lead anyone to this bizarre conclusion.

Defendants' argument ignores the critical fact that the adoptions of Respondent occurred after Hank Williams, Sr.'s death. Whatever the merits of Petitioners' argument where the author-parent voluntarily places his/her child up for adoption,[4] it has no persuasive force in this case, where the undisputed evidence is that Hank Williams, Sr. died before Respondent was born and had expressed in writing an intent to care for and have custody of her after she was born.[5] To the extent Hank Williams, Sr.'s intent has any place in the interpretation of

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[4] The arguments probably have no merit in that situation either. See *Saroyan v. William Saroyan Foundation*, 675 F. Supp. 843, 845-46 (S.D.N.Y. 1987), *aff'd*, 862 F.2d 304 (2d Cir. 1988).

[5] As the Alabama Supreme Court noted (App. I-1.49-.50, n.23), "It is interesting to note that at the time [the custody/support] agreement was drafted, [Petitioner] Williams, Jr. did not live with his father, but rather lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams, [Sr.] attempted to provide the opportunity for a closer-child relationship with [Respondent] who was to live with him, than that being enjoyed by his other child."

the language of Section 101 of the Copyright Act of 1976, that intent refutes Petitioners' after-death adoption argument.

Petitioners' "class gift" analysis is equally without merit. First, Respondent was originally not "adopted out" of the Williams family – she was adopted by her paternal grandmother, Lillian Stone. That adoption implemented Hank Williams, Sr. intent that Respondent be raised by his family. It was only after William's sister reneged on her promise to keep the child in the family that Respondent was placed for adoption. Nor does Petitioners' reliance upon the Restatement (Second) of Property support Petitioners' arguments. The Restatement section quoted contemplates circumstances, as here, where the language of the donor, here Hank Williams, Sr., clearly expresses an intent to benefit the child, whether or not adopted out. The support and custody agreement signed by Respondent's father clearly manifests such intent.

If accepted, Petitioners' argument would apply to legitimate as well as to illegitimate children since the distinction Petitioners make is not related to the child's birth, but rather to his/her adoption. Petitioners' argument is contrary to the intent they ascribe to Congress – to provide for the natural dependents of the deceased author. A hypothetical using Williams, Jr. proves the point. Ownership of the first renewal copyright did not vest until 1972. If Williams, Jr.'s mother had died and he had been adopted before then, according to Petitioners' argument, then Williams, Jr. also would not be a child under the 1976 Act. The same would be true for any child of a deceased author who is adopted before the renewal

copyright term vested. This would be an absurd, illogical and unjust result.

Petitioners' argument that Respondent should no longer be considered the "child" of her father because she was adopted after his death echoes the rejected argument Petitioners made when the widow of Hank Williams, Sr. sued to establish her co-ownership of the renewal copyrights. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 403 F. Supp. 420 (M.D. Tenn. 1975), *aff'd*, 570 F.2d 554 (6th Cir. 1978). In that litigation, Petitioners argued that Billy Jean Berlin was not the "widow" of Hank Williams, Sr. for purposes of owning renewal copyrights, because after the death of Hank Williams, Sr., she remarried. This, like the argument made by Petitioners herein, simply ignores the fact that under the Copyright Act, the rights of widows and children to a share in the renewal copyrights vest indefeasibly upon the death of their spouse/father.

VI. CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied as this Court has denied on three prior occasions petitions for Writ of Certiorari in this and the related Alabama case.

Respectfully submitted,

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APPENDIX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 92-6254

D.C. Docket No. 91-T-00742

RANDALL HANK WILLIAMS, JR.,

Plaintiff-Appellant,

versus

CATHY LOUISE DEUPREE ADKINSON, a/k/a CATHERINE YVONNE STONE and JETT WILLIAMS; HONORABLE EUGENE W. REESE, in his official capacity as Circuit Court Judge for Montgomery County, Alabama only,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Alabama

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(February 25, 1993)

Before FAY and BIRCH, Circuit Judges, and KAUFMAN,* Senior District Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.

"Costs taxed against plaintiff-appellant."

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* Honorable Frank A. Kaufman, Senior U.S. District Judge for the District of Maryland, sitting by designation.

Judgment Entered: February 25, 1993
For the Court: Miguel J. Cortez, Clerk
By: Karleen McNabb
Deputy Clerk

ISSUED AS MANDATE: MAR 19 1993